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Monica R. Borne  
EllenAnn G. Sands

December 21, 1999

**RECEIVED**  
**ADMINISTRATIVE**

DEC 27 1999

## VIA AIRBORNE EXPRESS

Tennessee Regulatory Authority  
Secretary  
460 James Robertson Parkway  
Nashville, TN 37243-0505

TN REGULATORY AUTHORITY

*JK*

99-00986

Re: Application by International Exchange Communications, Inc. ("IE COM") and Advantage Telecommunications Corp. ("Advantage") for approval of Asset Purchase Agreement

Dear Sir or Madam:

On behalf of International Exchange Communications ("IE COM") and Advantage Telecommunications Corp., enclosed please find an original and thirteen (13) copies of the referenced Application. Also enclosed is a check in the amount of \$25.00 representing the filing fee for this matter.

Please date stamp and return the enclosed extra copy of this letter in the envelope provided.

Please call me should you have any questions concerning this filing. Thank you for your assistance with this matter.

Sincerely,

*EllenAnn Sands*  
EllenAnn Sands

EAS/rph

Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**STATE OF TENNESSEE**

RECEIVED  
DEC 27 PM 2 08

**JOINT APPLICATION OF INTERNATIONAL  
EXCHANGE COMMUNICATIONS, INC.  
D/B/A IE COM AND ADVANTAGE  
TELECOMMUNICATIONS CORP.,  
FOR APPROVAL OF AN ASSET PURCHASE  
AGREEMENT**

EXECUTIVE SECRETARY

**DOCKET NUMBER**

*99-00986*

**APPLICATION**

International Exchange Communications, Inc. ("IE COM") and Advantage Telecommunications Corp. ("Advantage"), (sometimes referred to jointly herein as "Applicants"), pursuant to the applicable Statutes of Tennessee and the Regulatory Authority's Regulations currently in effect and/or subsequently enacted, hereby request approval of a proposed Asset Purchase Agreement (the "Agreement").<sup>1</sup> As will be described in more detail below, the Agreement contemplates the purchase by IE COM of the assets of Advantage. IE COM proposes to acquire the customer accounts and related assets of Advantage and to begin to provide long distance service to the customers of Advantage under the Certificate of Public Convenience and Necessity, or other operating authority, previously issued to IE COM. As regulated telecommunications providers, IE COM and Advantage hereby seek of the Agreement.

Approval of the Agreement will be beneficial to the involved companies as well as their customers. Following consummation of the Agreement and consolidation of the assets, IE COM will be able to provide communications services to its customers in a more efficient manner. Approval of the Agreement will not in any way be detrimental to the public interests of the

<sup>1</sup> A draft copy of the proposed Asset Purchase Agreement is attached as Exhibit "A."

State of Tennessee. The customers of both IE COM and Advantage will continue to receive the same high quality service presently rendered to them. Additionally, no party to the Agreement will be given undue advantage over any other party.

In support of this Application, Applicants show the following:

## **I. THE PARTIES**

1. IE COM is a Delaware corporation which is a wholly owned subsidiary of Pacific Gateway Exchange, Inc., a Delaware corporation which is publicly traded on the NASDAQ National Market (hereinafter "PGEX"). IE COM's principal offices are located at 533 Airport Blvd., Suite 505, Burlingame, CA 94010. IE COM is a non-dominant carrier that provides domestic and international long distance service with its own facilities or through resale of purchased services from various facilities based carriers pursuant to the FCC's *Competitive Carrier* policies and is authorized to provide local service in accordance with applicable state competitive local exchange service rules and regulations.

2. IE COM is authorized by the FCC to offer domestic interstate and international services in all fifty (50) states and the District of Columbia as a non-dominant carrier. IE COM currently originates interstate traffic in fifty (50) states, and provides intrastate service, pursuant to certification, registration or tariff requirements, or on an unregulated basis, in fifty (50) states.

IE COM is a certificated interexchange carrier and local service provider in the State of Tennessee.<sup>2</sup>

3. Advantage is a privately held Delaware corporation with principal offices located at 125 S. Swoope Road, Suite 102, Maitland, Florida 32751. Advantage is a non-dominant carrier that

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<sup>2</sup> IE COM is certificated in this State, pursuant to authority granted in Docket No. 99-00048, dated September 14, 1999.

resells domestic and international long distance service from various facilities based carriers pursuant to the FCC's *Competitive Carrier* policies.

4. Advantage is authorized by the FCC to offer domestic interstate and international services in all fifty (50) states and the District of Columbia as a non-dominant carrier. Advantage currently originates interstate traffic in twenty-nine (29) states, and provides intrastate service, pursuant to certification, registration or tariff requirements, or on an unregulated basis, in twenty-nine (29) states. Advantage is a certificated carrier in the State of Tennessee.<sup>3</sup>

## **II. DESIGNATED CONTACT**

5. The designated contact for questions concerning this Application is:

EllenAnn G. Sands  
Nowalsky, Bronston & Gothard  
A Professional Limited Liability Company  
3500 North Causeway Boulevard  
Suite 1442  
Metairie, Louisiana 70002  
Telephone: (504) 832-1984  
Telefax: (504) 831-0892

6. Copies of such correspondence should also be sent to:

Advantage Telecommunications Corp.  
Attn: Sonya Bly  
125 S. Swoope Road, Suite 102  
Maitland, Florida 32751

and

International Exchange Communications, inc.  
Attn: Gail E. Granton  
533 Airport Blvd., Suite 505  
Burlingame, CA 94010

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<sup>3</sup> Advantage is certificated in this State, pursuant to authority granted in Docket 98-00762, dated December 15, 1998.

### **III. REQUEST FOR APPROVAL OF THE ASSET PURCHASE AGREEMENT**

7. Applicants propose a transaction which will accomplish the following:
  - a. Advantage shall sell, transfer and assign to IE COM all of Advantage's right, title and interest in and to Advantage's assets, as defined in the Asset Purchase Agreement;
  - b. In consideration for the above transfer and sale of assets, IE COM will pay to Advantage the purchase price set forth in the Asset Purchase Agreement; and
  - c. The assets to be purchased by IE COM include, to the extent permitted by this Commission, all of Advantage's customer accounts.

8. IE COM is well-qualified to consummate the transaction which is the subject of this Application. Current financial information for IE COM is included in the financial statements of IE COM's publicly held parent company, PGEX, which is attached hereto as Exhibit "B".<sup>4</sup>

9. IE COM proposes this transaction to transfer and consolidate the customer accounts of Advantage in order to create a single, larger provider of telecommunications facilitating efficiencies for the benefit of IE COM's customers. By virtue of these transactions, IE COM will realize significant economic, marketing and administrative efficiencies.

10. Following consummation of the transaction discussed above, all of the present customer accounts of Advantage will be transferred to IE COM, and IE COM will continue to service these customers through and pursuant to the Certificate of Public Convenience and Necessity, or other operating authority, presently utilized by IE COM in servicing of its existing customers in

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<sup>4</sup>

Exhibit "B" consists of PGEX's Financial Statement for the year 1999.

this State, to the extent permitted by the Regulatory Authority.<sup>5</sup>

11. The technical, managerial and financial personnel of Advantage will assist with the transition and integration of the acquired Assets after the transaction, and along with the technical, managerial and financial personnel of IE COM, will continue to serve the transferred Advantage customers with the same high level of expertise.

#### **IV. PUBLIC INTEREST CONSIDERATIONS**

12. Critical to the proposed transaction and consolidation of customer accounts is the need to ensure the continuation of high quality service to all customers currently served by Advantage. The proposed transaction will serve the public interest for the following reasons:

- a. It will enable IE COM to provide a streamlined level of service for all involved customers by creating a single, larger provider of telecommunications services to the customers in this State. The transaction will enhance the operating efficiencies, including market efficiencies, of IE COM.
- b. It will increase the appeal to present and potential customers because of IE COM's larger size and greater variety of service offerings as well as enhance the ability of IE COM to appeal to and serve national accounts.
- c. Finally, it will result in cost savings as the result of discounts on quantity ordering of materials and services.

13. Accordingly, the requested transaction and subsequent consolidation will serve to create a heightened level of operating efficiency which generally will serve to enhance the overall

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<sup>5</sup> Upon consummation of the proposed transaction, IE COM intends to notify all current end users of Advantage of the event and that no customers of Advantage will experience any change in rates due to the transaction by bill insert, a sample copy of which is attached hereto as Exhibit "C". To the extent that any present Advantage rate products are eventually changed or are not presently included in IE COM's Tariffs, IE COM will amend its Tariffs accordingly to include such rates. As a result, the transaction should not cause any inconvenience or confusion to the pre-existing customers of either Advantage or IE COM. In no event shall the customers of either Advantage or IE COM incur any increase in rates presently enjoyed by them.

capacity of IE COM to compete in the marketplace and to provide telecommunications services for a greater number of Tennessee consumers at competitive rates.

14. Additionally, IE COM will possess a greater customer account base as the result of the proposed purchase of assets, and will thus be a stronger carrier to provide high quality service to all customers presently serviced by both IE COM and Advantage.

#### **V. EXPEDITED REVIEW**

15. Applicants request expedited review and disposition of the instant Application in order to allow Applicants to consolidate their respective operations as soon as possible.

#### **VI. NO TRANSFER OF CERTIFICATES**

16. Applicants do not request transfer of Advantage's Certificate of Public Convenience and Necessity, or other operating authority, to IE COM.

## VII. CONCLUSION

17. WHEREFORE, for the reasons stated herein, Applicants respectfully request that the Regulatory Authority authorize IE COM and Advantage to consummate the agreement described above. More specifically, Applicants request that the Regulatory Authority , on an expedited basis, approve the Agreement, the asset purchase transaction contemplated therein and the transfer of Advantage's current customer accounts to IE COM.

DATED this 21st day of December, 1999

Respectfully submitted,

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EllenAnn G. Sands  
Nowalsky, Bronston & Gothard  
A Professional Limited Liability Company  
3500 North Causeway Boulevard  
Suite 1442  
Metairie, Louisiana 70002  
(504) 832-1984  
Counsel for International Exchange Communications,  
Inc. ("IE COM") and Advantage Telecommunications  
Corp.

STATE OF California

COUNTY OF San Mateo

**VERIFICATION**

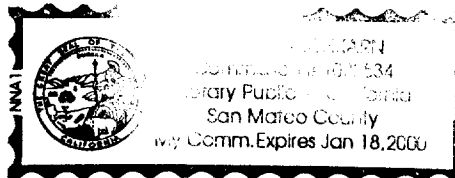
I, Sandra Grey, am the CFO/Vice President- Finance of International Exchange Communications, Inc., and am authorized to make this verification on its behalf. The statements made in the foregoing Application are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By:   
Name: Sandra Grey  
Title: Vice President/Finance - CFO

Sworn to and subscribed before me, Notary Public, in and for the State and County named above, this 9<sup>th</sup> day of December, 1999

  
Notary Public

My commission expires: Jan. 18, 2000



STATE OF Florida  
COUNTY OF Orange

VERIFICATION

I, Sonya Bly, am the President of Advantage Telecommunications Corp. , and am authorized to make this verification on its behalf. The statements made in the foregoing Application are true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true.

By: Sonya Bly  
Name: Sonya Bly  
Title: President

Sworn to and subscribed before me, Notary Public, in and for the State and County named above, this 8 day of December, 1999

Karen S. Indiveri  
Notary Public

My commission expires: \_\_\_\_\_



Exhibit "A"  
Asset Purchase Agreement

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_\_ between International Exchange Communications, Inc., a Delaware corporation ("Purchaser"), Advantage Telecommunications Corp., a Delaware corporation ("Seller"), Sonya Bly ("Bly" or "Shareholder") and Advanced Marketing Management, Ltd., a Nevada corporation ("Consultant").

WHEREAS, Seller conducts business as a reseller of long distance telecommunications services and has established a customer base and related assets which it now desires to sell; and

WHEREAS, Purchaser desires to purchase the customer base and related assets of Seller on the terms and subject to the conditions of this Agreement; and

WHEREAS, Shareholder is the only shareholder of Seller and will derive substantial direct and indirect benefits from the sale of the customer base and related assets of Seller to Purchaser.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants, representations and warranties herein contained, it is hereby agreed as follows:

### 1. Sale and Transfer of Assets

#### 1.1 Assets to be Sold

Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, convey, transfer, assign and deliver to Purchaser, and Purchaser agrees to purchase from Seller, all of Seller's right, title and interest in and to the following assets of Seller (the "Assets") excluding cash, bank accounts, marketable securities, corporate records, tax refunds and claims of Seller against others for damages:

(a) The "Customer Related Assets," comprised of (1) all end user long distance telecommunications customer accounts of Seller which are listed in an electronic format satisfactory to Purchaser (which electronic format shall include all customer accounts, whether currently active or inactive, in existence between \_\_\_\_\_ and the Closing Date) (the "Qualified Customer Accounts"); (the end users of the long distance telecommunications services that generate the Qualified Customer Accounts shall be hereinafter referred to as the "Customers"); (2) all accounts receivable related to, associated with and derived from the Qualified Customer Accounts (collectively, the "Accounts Receivable"); (3) all of Seller's rights under any agreements, application

forms, term contracts, letters of agency and all other contractual instruments between Seller and one or more Customers related to the Qualified Customer Accounts (collectively, the “**Customer Contracts**”), including but not limited to Seller’s right to assert claims and take other rightful actions in respect of breaches, defaults and other violations of such Customer Contracts; (4) all customer and other deposits held or made by Seller related to the Qualified Customer Accounts; (5) all Authorizations (as hereinafter defined) related to the Qualified Customer Accounts required to be transferred in accordance with Section 2.3(n); and (6) all relationships and goodwill related to the Qualified Customer Accounts.

(b) The “Non-Customer Assets” including:

(i) All of Seller’s rights in the Non-Customer Contracts (as hereinafter defined) which the Purchaser and Seller agree are to be included as “Assets” in accordance with Section 2.3(h);

(ii) All of Seller’s current toll-free numbers used for customer service with respect to the Qualified Customer Accounts in accordance with Section 2.3(i); and

(iii) the Intellectual Property (as hereinafter defined) other than any of the names in which the Seller does business and non-proprietary software.

## 2. The Closing

### 2.1 Place and Date

The closing of the purchase and sale of the Assets (the “**Closing**”) shall take place at the offices of Purchaser located at 533 Airport Boulevard, Suite 505, Burlingame, California 94010, at or before \_\_\_\_\_, local time, as soon as reasonably practicable after the conditions set forth in **Section 7** hereof have been satisfied but in no event later than \_\_\_\_\_. The date of the Closing is herein referred to as the “**Closing Date.**”

### 2.2 Transfer of Assets

(a) At the Closing and subject to the terms and conditions of this Agreement, Seller shall deliver to Purchaser the following, and simultaneously with such delivery, Seller shall take such action as may be necessary or reasonably requested by Purchaser to place Purchaser in possession and control of the Assets:

(i) Such bills of sale, assignments, novation agreements, master letters of agency or other instruments of transfer and assignment as shall be necessary to vest in Purchaser title to the Assets sold and assigned under this Agreement, free and clear of all liens, claims and encumbrances;

(ii) Copies of resolutions of the Board of Directors of Seller authorizing the execution, delivery and performance of this Agreement by Seller and a certificate of Seller's secretary, dated the Closing Date, that such resolutions were duly adopted and are in full force and effect;

(iii) A current list (in electronic format) of the Qualified Customer Accounts to be transferred and an accounts receivable aging report for such Qualified Customer Accounts; and

(iv) Such other certificates or other documents or instruments as the Purchaser or Purchaser's counsel may reasonably request.

(b) At the Closing, as a condition to Seller's obligations under this Agreement, Purchaser shall deliver to Seller the following:

(i) All instruments as may be reasonably necessary by which Purchaser assumes the obligations and liabilities to be assumed by it hereunder;

(ii) Copies of resolutions of the Board of Directors of Purchaser authorizing the execution, delivery and performance of this Agreement by Purchaser, including, without limitation, the issuance of the Purchase Price Shares (as hereinafter defined), and a certificate of Purchaser's secretary, dated the Closing Date, that such resolutions were duly adopted and are in full force and effect;

(iii) The balance of the Purchase Consideration (as hereinafter defined), including duly issued certificates representing the Purchase Price Shares; and

(iv) Such other certificates or other documents or instruments as Seller or Seller's counsel may reasonably request.

### **2.3 Purchase Consideration; Adjustments**

(a) The purchase consideration (the "**Purchase Consideration**") to be paid by Purchaser to Seller for the Assets shall be: (i) the following amount in cash as adjusted pursuant to Sections 2.3(c) and (d): (A) minus all accounts payable of Seller which Purchaser and Seller agree in writing in accordance with Section 2.3(l) are to be assumed by Purchaser at the Closing (the "**Accounts Payable**") and (B) plus all Accounts Receivable of Seller which Purchaser will acquire from Seller in accordance with Section 2.3(m) at Closing and (ii) the Purchase Prices Shares (as hereinafter defined) as set forth below (as adjusted, the "**Purchase Consideration**").

(b) On the Closing Date, Purchaser shall (i) issue to Seller's designee(s) (as adjusted for any stock splits, stock dividends, reverse stock splits or similar transactions, the "**Purchase Price Shares**") of

common stock, par value \_\_\_\_\_ per share, of Pacific Gateway Exchange, Inc. ("PGE Common Stock"), and (ii) deliver to Seller a cash payment in the amount identified in Section 2.3(f). The parties hereby acknowledge that the Purchase Price Shares granted to Seller pursuant to this Agreement shall not be registered under the Securities Act of 1933, as amended (the "Securities Act").

(c) Fifteen (15) days following the Closing Date (the "**Purchase Price Adjustment Date**"), Purchaser shall analyze and determine the Net Revenue (as hereafter defined) of the Qualified Customer Accounts for the month of \_\_\_\_\_, and shall notify Seller in writing (the "**Adjustment Date Revenue Statement**") of such Net Revenue amount (the "**Adjustment Date Net Revenue**"). Unless Seller delivers to Purchaser a Notice of Disagreement (hereinafter defined) in accordance with the terms of this Section 2.3(c), Purchaser shall make either a downward or upward adjustment (the "**Adjustment**") to the cash component of the Purchase Consideration to the extent that the Adjustment Date Net Revenue amount is less than \_\_\_\_\_ or greater than \_\_\_\_\_. In the event that the Adjustment Date Net Revenue is less than \_\_\_\_\_, Seller shall refund to Purchaser cash in the amount of the difference between \_\_\_\_\_ and the Adjustment Date Net Revenue, multiplied by 4.2 (a "**Downward Adjustment**"). In the event that the Adjustment Date Net Revenue is greater than \_\_\_\_\_, Purchaser shall pay to Seller cash in the amount of the difference between the Adjustment Date Net Revenue and \_\_\_\_\_, multiplied by 4.2 (an "**Upward Adjustment**"). Within ten (10) days after delivery of the Adjustment Date Revenue Statement, Seller may dispute all or any portion of the Adjustment Date Revenue Statement by giving written notice (a "**Notice of Disagreement**") to Purchaser setting forth in reasonable detail the basis for any such dispute (a "**Disagreement**"). The parties shall promptly commence good faith negotiations with a view towards resolving any and all Disagreements. If Seller shall deliver a Notice of Disagreement and Purchaser does not dispute all or any part of such Notice of Disagreement by giving notice to Seller setting forth in reasonable detail the basis for such disputes within ten (10) days following delivery of such Notice of Disagreement, Purchaser shall be deemed to have irrevocably accepted the Adjustment Date Revenue Statement as modified in the manner described in the Notice of Disagreement. If Purchaser disputes all or any portion of the Notice of Disagreement within the ten (10) day period described hereinabove, and within ten (10) days following the delivery to Seller of the notice of such dispute, Seller and Purchaser do not resolve the Disagreement (as evidenced by a written agreement among the parties hereto), such Disagreement shall thereafter be referred by either of Seller or Purchaser to an independent accounting firm for a resolution of such Disagreement in accordance with the terms of this Agreement. The determinations of such firm with respect to any Disagreement shall be rendered within ten (10) days after referral of the Disagreement to such independent accounting firm, shall be final and binding upon the parties and the amount so determined shall be used to calculate the Adjustment as provided for hereinabove. The costs associated with having an independent accounting firm resolve a Disagreement shall be borne equally by Purchaser and Seller. For purposes of this paragraph and Section 2.3(d), the term "**Net Revenue**" shall mean gross revenue earned or to be earned by Seller (including PICC charges) relating to calls made by or for the

account of Customers or Qualified Customer Accounts during the month of (for purposes of Section 2.3(c)), (for purposes of Section 2.3(d)) or any other calendar month (for purposes of Section 3 of the Management Agreement), as the case may be, based upon call records submitted to Billing Concepts, Inc., in each case, excluding any and all revenues for taxes and governmental assessments of any kind or nature.

(d) On or before \_\_\_\_\_, Purchaser shall analyze and determine the Net Revenue of the Qualified Customer Accounts for the month of \_\_\_\_\_ and shall notify Seller in writing (the "**Adjustment Statement**") of such Net Revenue amount (the "**Net Revenue**") if Purchaser has determined that such \_\_\_\_\_ Net Revenue is less than \_\_\_\_\_. Unless Seller delivers to Purchaser an \_\_\_\_\_ Disagreement Notice (hereinafter defined) in accordance with the terms of this Section 2.3(d), Purchaser shall make a downward adjustment (the "**Purchase Price Decrease**") to the cash component of the Purchase Consideration by an amount equal to the difference between (i) \_\_\_\_\_ minus (ii) the following: the Net Revenue times 4.2, times 2, divided by 3. Within ten (10) days after delivery of the \_\_\_\_\_ Adjustment Statement, Seller may dispute all or any portion of the Adjustment Statement by giving written notice (an "**Disagreement Notice**") to Purchaser setting forth in reasonable detail the basis for such a dispute (an "**Dispute**"). The parties shall promptly commence good faith negotiations with a view towards resolving any and all \_\_\_\_\_ Disputes. If Seller shall deliver an Disagreement Notice and Purchaser does not dispute all or any part of such Disagreement Notice by giving notice to Seller setting forth in reasonable detail the basis for such disputes within ten (10) days following delivery of such \_\_\_\_\_ Disagreement Notice, Purchaser shall be deemed to have irrevocably accepted the \_\_\_\_\_ Adjustment Statement as modified in the manner described in the \_\_\_\_\_ Disagreement Notice. If Purchaser disputes all or any portion of the \_\_\_\_\_ Disagreement Notice within the ten (10) day period described hereinabove, and within ten (10) days following the delivery to Seller of the notice of such dispute, Seller and Purchaser do not resolve the Dispute (as evidenced by a written agreement among the parties hereto), such Dispute shall thereafter be referred by either of Seller or Purchaser to an independent accounting firm for a resolution of such \_\_\_\_\_ Dispute in accordance with the terms of this Agreement. The determinations of such firm with respect to any \_\_\_\_\_ Dispute shall be rendered within ten (10) days after referral of the \_\_\_\_\_ Dispute to such independent accounting firm, shall be final and binding upon the parties and the amount so determined shall be used to calculate the \_\_\_\_\_ Purchase Price Decrease as provided for hereinabove. The costs associated with having an independent accounting firm resolve a \_\_\_\_\_ Dispute shall be borne equally by Purchaser and Seller.

(e) The Purchase Price Shares shall be issued to the following persons or entities at Closing in the following amounts, unless otherwise indicated by Seller prior to the Closing Date: (A) Sonya Bly: \_\_\_\_\_ Purchase Price Shares; (B) Consultant: \_\_\_\_\_ Purchase Price Shares; and (C) The Lustigman Firm, P.C.: \_\_\_\_\_ Purchase Price Shares.

Seller shall deliver to Purchaser at Closing a letter describing the basis for each such stock issuance.

(f) The cash portion of the Purchase Consideration (the “**Cash Purchase Price**”) shall be paid as follows:

- (i) on the date hereof, Purchaser shall pay to Seller
- (ii) on or before \_\_\_\_\_ Purchaser shall pay to Seller
- (iii) on or before \_\_\_\_\_ Purchaser shall pay to seller
- (iv) on the earlier of the Closing Date or \_\_\_\_\_, Purchaser shall pay to Seller
- (v) on the Closing Date, Purchaser shall pay to Seller 90% of the balance of the Cash Purchase Price not already paid by Purchaser; and
- (vi) on \_\_\_\_\_ Purchaser shall pay to Seller the remaining balance of the Cash Purchase Price not already paid by Purchaser taking into account the adjustments required by Sections 2.3(c) and (d).

Seller acknowledges that Seller from time to time will owe to Purchaser certain amounts pursuant to the Management Agreement and Seller specifically authorizes Purchaser to offset amounts due and payable by Seller to Purchaser under the Management Agreement against amounts due and payable hereunder. The amounts due and payable pursuant to subsections (i) - (iv) above shall be non-refundable deposits on the part of Purchaser that are due notwithstanding any termination of this Agreement for any reason and need not be repaid by Seller in the event of a termination of this Agreement.

(g) The Cash Purchase Price shall be payable in immediately available funds by wire transfer in accordance with the instructions delivered in writing by Seller to Purchaser.

(h) No later than thirty (30) days prior to the Closing Date, the Purchaser shall deliver to the Seller a list of all Non-Customer Contracts which the Purchaser desires to acquire from the Seller at Closing. Between the date of such notice and the Closing Date, the Purchaser and Seller shall use commercially reasonable efforts to negotiate with the counterparty to each such Non-Customer Contract a new contract between such counterparty and the Seller to continue the Seller’s relationship with such counterparty on the same terms and conditions as contained in the Non-Customer Contract which the Purchaser desires to acquire. In the event that the Seller is able to negotiate such a new contract, the Seller will assign to the Purchaser Seller’s rights in such Non-Customer Contract. To the extent that the Seller is not able to negotiate such a replacement contract with any such counterparty, the Seller may retain the related Non-

Customer Contract and shall not be required to assign such Non-Customer Contract to Purchaser at Closing.

(i) The Seller utilizes two toll-free numbers for its customer service. One toll-free number is manned by Billing Concepts, Inc. and may be owned by Billing Concepts, Inc. At Closing, the Seller shall assign to the Purchaser all of Seller's right, title and interest in and to both toll-free numbers, and, to the extent that the Seller is not the owner of the toll-free number which is manned by Billing Concepts, Inc., the Seller shall utilize commercially reasonable efforts to persuade Billing Concepts, Inc. to assign its interests in such toll-free number to the Purchaser.

(j) Effective on the date hereof through and including the earlier of or the second anniversary of the Closing Date, the Seller hereby licenses to the Purchaser on a non-exclusive, royalty-free basis the right to use the Seller's name in connection with the handling of billing, customer service and other matters with respect to the Qualified Customer Accounts; provided that: (a) the Seller shall be permitted to revoke this license in the event that the use by Purchaser of Seller's name for the purposes identified in this subsection creates material confusion among customers or the market place or in the event that Purchaser's handling of Qualified Customer Accounts in the name of the Seller brings discredit to Seller's name, in each case, in Seller's reasonable discretion and (b) the Purchaser shall not be permitted to market to any new customers under Seller's name.

(k) The Purchaser acknowledges that the Seller does not maintain copies of all verification records with respect to the Qualified Customer Accounts and that many of such records may be in the possession of one or more companies that provide verification services to the Seller. In lieu of delivering all such verification records to the Purchaser at Closing, the Purchaser agrees that the Seller may provide at Closing a letter addressed to each such verification company directing such verification company to hold all verification records relating to Qualified Customer Accounts at the direction of the Purchaser.

(l) On the second day prior to the Closing Date, the Seller shall deliver to the Purchaser an accounts payable aging of all accounts payable of Seller which relate to the Qualified Customer Accounts which the Seller wishes for the Purchaser to assume at Closing. The Purchaser shall assume all such accounts payable at Closing and the Purchase Consideration shall be adjusted in accordance with Section 2.3(a) as a result of such assumption.

(m) Two days prior to the Closing Date, the Seller shall deliver to the Purchaser an aging of accounts receivable relating to Qualified Customer Accounts for all accounts receivable for Qualified Customer Accounts that are owned by Seller (it being acknowledged that, in accordance with the Management Agreement between Purchaser and Seller dated the date hereof (the "Management Agreement") the Purchaser owns all accounts receivable from Qualified Customer Accounts from and after with the Seller only owning accounts receivable for Qualified Customer Accounts prior to

At the Closing, the Purchaser shall acquire all such accounts receivable of Seller and the Purchase Consideration shall be adjusted in accordance with Section 2.3(a).

(n) The Purchaser acknowledges that the Seller desires to maintain any and all Authorizations which are not required by law to be transferred to the Purchaser in connection with the transaction set forth in this Agreement. The Seller and Purchaser hereby agree to appoint Nowalsky, Bronston & Gothard to identify those authorizations which are required by law to be transferred to Purchaser at Closing and those which are not required to be so transferred. Seller agrees to transfer to Purchaser any Authorizations required to be transferred and Purchaser agrees that Seller shall not be required to transfer any Authorizations not so required to be transferred.

(o) The Purchaser agrees to use its best efforts to resolve any matters necessary in order to obtain FCC approval for the transactions contemplated hereby, including, without limitation, the payment of any fees or taxes in connection therewith.

#### **2.4 Limitation on Assumption of Liabilities**

Except for the Accounts Payable, the Non-Customer Contracts which are included in the Assets and any chargebacks, setoffs or similar liabilities for uncollectible, overpaid or other accounts receivable generated after \_\_\_\_\_ with respect to which Purchaser has previously received cash, Purchaser shall not be liable for any of the obligations or liabilities of Seller, of any kind or nature. Seller shall pay, perform and discharge all of its valid liabilities and obligations not assumed by Purchaser and shall specifically indemnify and hold harmless Purchaser from and against same.

### **3. Representations and Warranties of Seller and the Shareholders**

Seller represents and warrants to Purchaser as follows, which representations and warranties are made as of the date hereof and as of the Closing Date and shall survive the Closing for a period of one year (except with respect to the representations and warranties in Section 3.6 which shall survive for ten years):

#### **3.1 Organization**

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, is duly qualified and in good standing as a foreign corporation in the states set forth on **Schedule 3.1(a)** attached hereto with full requisite corporate power and authority to own its properties and assets and to carry on lawfully its business as currently conducted, and is not required to be qualified to do business as a foreign corporation in any other jurisdiction.

(b) Seller does not have any subsidiaries and neither owns nor holds any securities of, or any interest in, any other person or entity and is not a partner or

member in or subject to any joint venture, partnership, limited liability company or other arrangement or contract that is or could be treated as a partnership for federal income tax purposes, in each case, other than de minimus interests in publicly traded entities.

### **3.2 Authorization**

Seller has all requisite corporate power and authority to enter into this Agreement and the Management Agreement and to carry out the transactions contemplated by this Agreement and the Management Agreement. The execution, delivery and performance by Seller of this Agreement, the Management Agreement and the other agreements and documents referred to herein and therein and the actions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of Seller, and this Agreement, the Management Agreement and such other agreements and documents constitute valid and binding obligations of Seller, the Shareholder and the Consultant, enforceable in accordance with their terms, subject to (i) general principles of equity, regardless of whether enforcement is sought in a proceeding in equity or at law, and (ii) bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium, receivership or other similar laws relating to or affecting creditors' rights generally.

### **3.3 Liabilities**

Seller has no obligations or liabilities, whether direct or indirect, joint or several, absolute or contingent, matured or unmatured, secured or unsecured, which could be affected by the execution and delivery of this Agreement or consummation of the transactions contemplated by this Agreement or which could affect the same.

### **3.4 Title to and Condition of Assets and Property**

Seller has good and marketable title to the Assets free and clear of all liens, claims, charges, security interests, options, or other title defects or encumbrances, except for those in favor of RFC Capital Corporation. The Assets contain no real and personal property currently leased or otherwise occupied or used but not owned by Seller. The Assets do not include any real property or any interest therein. All personal property included in the Assets is owned by Seller and all property owned or leased by Seller which is included in the Assets is in good operating condition and repair (ordinary wear and tear excepted), is suitable for the use to which the same is customarily put, is free from defects (other than minor defects which do not interfere with the use or operation thereof) and is of a quality presently usable in the ordinary course of the operation of the business of Seller and is all of the assets currently used or needed in said business other than the contracts listed on **Schedule 3.6**. The operations of Seller conform with all applicable federal, state and local laws, ordinances, rules and regulations except to the extent that any such non-compliance does not have a material adverse effect on the business of Seller.

### 3.5 Intellectual Property

Set forth on **Schedule 3.5** hereto is a complete list of any and all patents, copyrights, trade names, trademarks, service marks, other such names or marks and applications therefor of the Company (the "**Intellectual Property**"). To the knowledge of Seller and the Shareholder, no other intellectual property is required in the operation of the business of Seller as it is currently conducted. There are no pending or, to the knowledge of Seller and the Shareholders, threatened claims of infringement upon the rights to any intellectual property of others or any agreements or undertakings with respect to any such rights. Seller and the Shareholder do not know of any valid basis for any such claim of infringement. The use of the Intellectual Property by Seller does not infringe on the rights of any person who has ever been employed by Seller since its inception.

### 3.6 Contracts

Except as set forth in **Schedule 3.6** or in any other Schedule attached hereto and referenced below, true, correct and complete copies of which referenced items have been delivered to Purchaser (any such contracts are referred to collectively as the "**Non-Customer Contracts**" and individually as a "**Non-Customer Contract**"), Seller is not a party to or bound by any contract or agreement, written or oral with a person or entity other than a Customer which is material to the ongoing business of the Seller.

None of Seller or any other party to any Non-Customer Contract has breached any provisions of, or is in violation or default under the terms of, or has caused or permitted to exist any event that with or without due notice or lapse of time or both would constitute a default or event of default under, any such Non-Customer Contract. There are no facts or circumstances which have arisen on or prior to the date hereof which could lead to any additional obligation under any of the Non-Customer Contracts (payment or otherwise) or to the violation, cancellation or other early termination of one or more of the Non-Customer Contracts. All Non-Customer Contracts are valid, binding and in full force and effect and will continue in full force and effect to the benefit of Seller, its respective successors and assigns, if such party so elects, without change following the consummation of the transactions contemplated by this Agreement if assigned to Purchaser in accordance with **Section 2.3(h)** hereof. The consummation of the transactions contemplated by this Agreement will not violate or cause a default or event of default under any provision of, or result in the acceleration of any obligation under, or the termination of, any Contract.

### 3.7 Litigation and Compliance

Except as set forth in the letter from Andrew B. Lustigman to J. Marshall Page dated (the "Lustigman Letter") attached hereto, there is no pending or, to the knowledge of Seller, the Consultant and the Shareholder, threatened claim, investigation, lawsuit or administrative proceeding by or against Seller or the

operation of its business. Seller and the operation of its business are in compliance with all federal, state, local and foreign laws and regulations and administrative orders and all tariffs, rules and regulations of local exchange carriers and inter-exchange carriers applicable thereto except to the extent that any such non-compliance does not have a material adverse effect on the business of Seller. There is no order, writ, injunction or decree relating to or affecting the operations or the business of Seller or the transactions contemplated by this Agreement.

### **3.8 Non-Contravention**

Neither the execution of this Agreement or the Management Agreement nor the consummation of the transactions contemplated hereby will result in the breach of any term or provision of, constitute a default under, or accelerate or augment the performance otherwise required under, any provision of the certificate of incorporation or bylaws of Seller, or any agreement (including without limitation any loan agreement or promissory note), indenture, instrument, order, law or regulation to which Seller, the Consultant or the Shareholder, collectively or individually, are a party or by which they are bound, or will result in the creation of any lien or encumbrance upon any of the Assets.

### **3.09 Licenses, Permits and Required Consents**

Set forth on **Schedule 3.09(a)** attached hereto is a list of all federal, state, local and foreign franchises, tariffs, licenses, ordinances, certifications, approvals, authorizations and permits (collectively, the “**Authorizations**”) necessary for Seller to conduct its business as currently conducted. All Authorizations relating to the business of Seller are in full force and effect, no violations have been made in respect thereof, and no proceeding is pending or, to the knowledge of Seller and the Shareholders, threatened which could have the effect of revoking or limiting any such Authorizations and the same will not cease to remain in full force and effect by reason of the transactions contemplated by this Agreement.

**Schedule 3.09(b)** attached hereto sets forth all registrations, filings, applications, notices, transfers, consents, approvals, orders, qualifications, authorizations, certifications, waivers or other actions of any kind required to be made, filed, given or obtained by or on behalf of Seller or the Shareholders with, to or from any persons, governmental authorities or private entities in connection with the consummation of the transactions contemplated by this Agreement (“**Consents**”).

### **3.10 Disclosure**

No representation, warranty or statement made by or on behalf of Seller in this Agreement or the Schedules attached hereto or in the certificates or other materials furnished or to be furnished to Purchaser or its representatives prior to the Closing in connection with this Agreement and the transactions contemplated hereby or thereby,

contains or will contain any untrue statement of fact or omits or will omit to state a fact required to be stated herein or therein or necessary to make the statements contained herein or therein not misleading. Prior to the Closing, full disclosure shall have been made to Purchaser of all material facts with respect to Seller, its business, assets, operations, condition and prospects and the transactions contemplated by this Agreement which a reasonable purchaser would deem relevant. Seller shall promptly notify Purchaser of any change or event which could materially adversely affect the assets, operations, business, conditions or prospects of Seller prior to the Closing.

### **3.11 Brokers**

Except as identified in the Lustigman Letter, neither Seller nor the Shareholders have engaged any investment banker, financial advisor or broker of any kind with respect to the sale of the Assets and no fee or other compensation shall become payable to any investment banker, financial advisor or broker of any kind, engaged by Seller, Shareholder or Consultant, upon the closing of the transactions contemplated hereby.

### **3.12 Due Diligence**

Seller has used best efforts to comply in full in responding to the due diligence requests of the Purchaser.

### **3.13 Investment Representations**

Each of Shareholder, The Lustigman Firm, P.C. and the Consultant represents and warrants to Purchaser that it is acquiring the Purchase Price Shares registered in its name for its own account and not with a view to dividing PGE Common Stock with others or participating directly or indirectly in any resale, distribution or underwriting thereof and will not transfer or assign PGE Common Stock in violation of the Securities Act, applicable state securities laws or this Agreement. Each of Shareholder and Consultant further represents and warrants that it is able to bear the economic risk of the investment in PGE Common Stock and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of such investment. Each of Shareholder and Consultant shall provide such information and execute such documents as Purchaser may reasonably request in order to verify the foregoing. Shareholder and Consultant acknowledges it has been provided an opportunity to ask questions and receive answers from Purchaser concerning the terms and conditions of the offering of PGE Common Stock and to obtain any additional information which Purchaser possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of any information furnished in connection with said offering.

### **3.14 Customer Relationships**

Seller has no knowledge that any material (i.e., in excess of 5% of Net Revenue individually or in the aggregate) Qualified Customer Account has been terminated or is expected to be terminated, in whole or in part; provided, however, that this subsection shall not be construed as a representation, warranty, or guarantee that any such customer will, after the Closing, maintain its present business relationships with Purchaser. To the best of Seller's and the Shareholders' knowledge, no director or officer of Seller has any direct or indirect interest in any such Qualified Customer Accounts.

### **3.15 Disclaimer of Fraudulent Intent**

Seller and the Shareholder represent and warrant that the transactions described in this Agreement have been undertaken in good faith, considering their obligations to any person or entity to whom Seller owes a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured (collectively such persons with such claims are called "**Seller Creditors**" under this paragraph), and has undertaken these transactions without any intent to hinder, delay or defraud any such Seller Creditors, and either has disclosed in the ordinary course of business or will undertake to disclose to all such Seller Creditors the existence of this transaction, and has not and will not conceal this transaction or the proceeds of this transaction from any such Seller Creditors. Seller further represents and warrants that: (1) neither Seller, the Shareholders nor any current or former employees of Seller or any of Seller's corporate affiliates will retain possession or control of any of the property transferred under this Agreement following the Closing, except as expressly provided in this Agreement and then only for and on behalf of the account of the Purchaser; (2) Seller has not been sued or threatened with suit by any Creditor prior to the execution of this Agreement; (3) Seller has not removed or concealed any assets from any Seller Creditors; (4) Seller has not incurred any substantial debt that is significantly greater than the normal and customary debts of Seller in the ordinary course of business; and (5) Seller believes in good faith that, at Closing, Seller will receive consideration reasonably equivalent to the value of the Assets transferred under this Agreement.

### **3.16 Protection of Qualified Customer Accounts**

Seller represents and warrants that it has used its best efforts to ensure that all information related to the Qualified Customer Accounts, including, but not limited to, all customer lists, mailing lists, books, records, files, data, and letters of agency, has not been disclosed to anyone other than employees of Seller and any of Seller's corporate affiliates and that no such employees will possess, control or otherwise have any right to such information following the Closing of the transaction contemplated hereby.

#### **4. Representations and Warranties of Purchaser**

Purchaser represents and warrants to Seller as follows:

##### **4.1 Corporate Status**

Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware with full corporate power and authority to carry on its business as now conducted.

##### **4.2 Authority for Agreement**

Purchaser has the power and authority to execute and deliver this Agreement and the Management Agreement and to carry out its obligations hereunder. The execution, delivery and performance by Purchaser of this Agreement and the Management Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Purchaser. This Agreement and the Management Agreement have been duly executed by Purchaser and the transactions contemplated by them constitute the legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms. No consent, approval, or authorization of, or declaration, filing, or registration with, any federal or state governmental or regulatory authority is required to be made or obtained by Purchaser in connection with the execution, delivery, and performance of this Agreement or the Management Agreement and the consummation of the transactions contemplated by this Agreement or the Management Agreement, except approval of applicable public service commissions.

##### **4.3 No Conflicts**

To the best of Purchaser's knowledge, the execution, delivery and performance of this Agreement and the Management Agreement and the consummation of all of the transactions contemplated hereby: (i) do not and will not with or without the giving of notice or passage of time or both, violate, conflict with or result in a breach or termination of any provision of, or constitute a default under, or accelerate or permit the acceleration of the performance required by the terms of, or result in a creation of any mortgage, security interest, claim, lien, charge or other encumbrance upon any of its assets pursuant to, or otherwise give rise to any liability or obligation under any agreement, mortgage, deed of trust, license, permit or other agreement or instrument, or any order, judgment, decree, statute, regulation or any other restriction of any kind or description to which Purchaser is a party or by which Purchaser or its assets may be bound; and (ii) will not terminate or result in the termination of any such agreement or instrument, or in any way affect or violate the terms and conditions of, or result in the cancellation, modification, revocation or suspension of, any rights in or to its assets.

**4.4 Disclosure.** The representations, warranties and statements made by Purchaser in this Agreement and in the certificates and other documents delivered pursuant hereto do not contain any untrue statement of a material fact, and, when taken together, do not omit to state any material fact necessary to make such representations, warranties and statements, in light of the circumstances under which they are made, not misleading.

**4.5 SEC Filings and Financial Information.** Pacific Gateway Exchange, Inc. ("PGE"), the owner of 100% of the capital stock of Purchaser, has filed with the Securities and Exchange Commission (the "Commission") its Annual Report on Form 10-K for the year ended December 31, 1998, together with all schedules and exhibits attached thereto, and Quarterly Reports on Form 10-Q for the quarters ended March 31, 1999, June 30, 1999 and September 30, 1999 (collectively, the "SEC Documents"). Each SEC Document, as of the date of its filing thereof with the Commission, conformed in all material respects with the requirements of the Exchange Act, and the rules and regulations thereunder. The financial statements of PGE, including the notes thereto, included in the SEC Documents complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the Commission with respect thereto, have been prepared in accordance with GAAP consistently applied (except as may be indicated in the notes thereto) and present fairly the consolidated financial position of PGE at the dates thereof and of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal audit adjustments).

**4.5 Purchase Price Shares.** All Purchase Price Shares are (i) fully paid, nonassessable and free and clear of all liens, encumbrances, pledges, charges and security interests, (ii) issued pursuant to Rule 144 promulgated by the Securities Exchange Commission under the Securities Act and subject only to the transfer restrictions set forth therein, (iii) issued to the following persons or entities in the following amounts, unless otherwise indicated by Seller prior to the Closing Date: (A) Sonya Bly: Purchase Price Shares; (B) The Lustigman Firm, P.C.: Purchase Price Shares; and (C) Consultant: Purchase Price Shares, (iv) not subject to any shareholder's agreement, voting trust or other similar agreement and (v) are entitled to the protections set forth in Section 6.8 hereof.

## **5. Seller's Obligations Before Closing**

Seller covenants that from the date of this Agreement and until the Closing Date:

(a) Purchaser and its counsel, accountants and other representatives shall have full access to all properties, books, accounts, records, contracts and documents of or relating to the Assets (including, but not limited to, billing records, customer service history, verbal letters of agency tapes or written letters of agency where required), but Purchaser shall not have access to any information not related to the Assets. Seller shall

#### **6.4 Compliance with Laws**

Seller understands that Seller's conduct prior to the Closing of this Agreement is subject to the rules and regulations of the Federal Communications Commission ("FCC") and certain state regulatory agencies, and Seller hereby agrees to be fully responsible for the acts and omissions of all of Seller's agents, servants and representatives prior to the Closing of this Agreement which are in violation of all laws, rules, regulations, administrative decisions and pronouncements of the FCC and certain state regulatory agencies, including but not limited to all applicable FCC and state regulatory agency rules regarding customer slamming and cramming, the violation of which may result in severe penalties and adverse consequences which the FCC or certain state regulatory agencies may attempt to impose upon Purchaser after the Closing of this Agreement.

#### **6.5 Bulk Sales**

Purchaser and Seller hereby agree to waive compliance with any and all applicable bulk sales laws.

#### **6.6 Continued Relationships.**

Seller and the Shareholders shall use commercially reasonable efforts to preserve intact the business of Seller and keep available the services of their respective officers and employees and maintain good relationships with suppliers, customers and others having business relations with Seller, and shall cause to be taken no change in the business, condition or results of operations of Seller which may have a material adverse effect on the assets, business, condition or prospects of Seller.

#### **6.7 Confidentiality.**

Except as contemplated by this Agreement, as required by law or otherwise expressly consented to in writing by Purchaser and Seller, all information or documents furnished hereunder by any party shall be kept strictly confidential by the party or parties to whom furnished at all times prior to the Closing Date, and in the event such transactions are not consummated, each shall return to the other all documents furnished hereunder and copies thereof upon request and shall continue to keep confidential all information furnished hereunder and shall not thereafter use the same for any purpose. Notwithstanding the foregoing, (a) Purchaser or PGE may issue or make a press release, announcement or other disclosure regarding this Agreement and the transactions contemplated hereby which it determines necessary or desirable under applicable law, and (b) Purchaser or PGE may, at any time after the date of this Agreement, file with the Securities and Exchange Commission (the "Commission") a Report on Form 8-K pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), with respect to the transactions contemplated by this Agreement, which Report may include, among other things, financial statements and pro forma financial

information with respect to Seller, and/or file with the Commission a registration statement under the Securities Act which includes a prospectus containing any information required to be included therein with respect to the transactions contemplated by this Agreement, including but not limited to financial statements and pro forma financial information with respect to Seller, and thereafter distribute said prospectus in connection with the offer and sale of securities of Purchaser or PGE. Seller and the Shareholders shall cooperate with Purchaser or and provide such information and documents as may be required in connection with any such filings.

In the event the Closing is not consummated, each party hereto will hold in absolute confidence any information obtained from another party except to the extent (a) such party is required to disclose such information by law or regulation, (b) disclosure of such information is necessary or desirable in connection with the pursuit or defense of a claim against the other party hereto, (c) such information was known by such party prior to such disclosure or was thereafter developed or obtained by such party independent of such disclosure, or (d) such information becomes generally available to the public or is otherwise no longer confidential. Prior to any disclosure of information pursuant to the exception in clause (a) or (b) of the preceding sentence, the party intending to disclose the same shall so notify the party which provided the same in order that such party may seek a protective order or other appropriate remedy should it choose to do so.

#### **6.8 Piggyback Rights.**

If, at any time after the Closing Date, shares of PGE Common Stock are to be registered under the Securities Act (other than on Forms S-4 or S-8 or any successor forms), the Shareholder, The Lustigman Firm, P.C. and the Consultant shall have the right to require that any of their shares of PGE Common Stock be included in such registration (the “**Shareholder Shares**”). Such registration shall be at the expense of PGE other than selling discounts and commissions attributable to the Shareholder Shares and the fees and expenses of counsel for the Shareholders, if any, which shall be borne by the Shareholders.

#### **6.9 Current Information**

From and after the Closing Date, and for so long as Seller, Shareholder or an affiliate of any of them, hold shares of PGE Common Stock, Purchaser agrees to use its best efforts to ensure that PGE files all reports required to be filed by it under the reporting requirement of Section 13 or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the “Act”); or, if PGE is not subject to Section 13 or 15(d) of the Act, PGE shall make publicly available, on a current basis, the information specified in Rule 144(c)(2) promulgated under the Securities Act. As used in this section, the term “affiliate” shall have the same meaning as in Rule 501 promulgated under the Securities Act.

## 7. Conditions Precedent

### 7.1 Conditions to Obligations of Purchaser

The obligation of Purchaser to pay the Purchase Consideration to Seller and to satisfy its other obligations hereunder shall be subject to fulfillment (or waiver by Purchaser) at or prior to the Closing, of the following additional conditions, which Seller agrees to use its best efforts to cause to be fulfilled:

#### (a) Representations, Performance

The representations and warranties of Seller and the Shareholder contained in **Section 3** hereof shall be true in all material respects at and as of the Closing Date, except as affected by the transactions contemplated hereby. Seller shall have duly performed and complied with all agreements and conditions required by this Agreement to be performed, or complied with, by it prior to or on the Closing Date.

#### (b) Corporate Proceedings

All corporate and other proceedings of Seller in connection with the transactions contemplated by this Agreement and all document and instruments incident to such corporate proceedings, shall be reasonably satisfactory in substance and form to Purchaser, and Purchaser shall have received all such documents and instruments or copies thereof.

#### (c) Approval of Federal Communications Commission

The Federal Communications Commission ("FCC") shall have granted any and all consents and approvals necessary to consummate the transactions contemplated hereby and the thirty-day notice period shall have expired.

#### (d) Consents

Seller shall have successfully arranged for the Consents necessary to assign the Contracts being assumed by Purchaser from Seller to Purchaser.

#### (e) Non-Competition Agreement

Shareholder, Consultant and Consultant's shareholder(s) shall have executed non-competition agreements, substantially in the form attached hereto as **Exhibit D** (the "**Non-Competition Agreement**"), stating that they will not solicit the customers represented by the Qualified Customer Accounts or otherwise compete with Purchaser with respect to the Qualified Customer Accounts.

## **7.2 Conditions to Obligations of Seller**

The obligations of Seller to deliver the bill of sale, assignments, endorsements and other instruments of transfer relating to the Assets and to satisfy Seller's other obligations hereunder shall be subject to the fulfillment, on or prior to the Closing Date (or waiver by Seller), of the following conditions, which Purchaser agrees to use its best efforts to cause to be fulfilled:

### **(a) Representations, Performance**

The representations and warranties of Purchaser contained in **Section 4** hereof shall be true at and as of the Closing Date. Purchaser shall have duly performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed, or complied with, by it prior to or on the Closing Date.

### **(b) Corporate Proceedings**

All corporate and other proceedings of Purchaser in connection with the transactions contemplated by this Agreement, and all documents and instruments incident thereto, shall be satisfactory to Seller and Seller shall have received all such documents and instruments, or copies thereof.

### **(c) No Material Changes**

No material changes in the financial position of Purchaser or material changes in the information previously disclosed to Seller shall have occurred.

### **(d) Delivery of Purchase Consideration**

Seller shall have been paid the Purchase Consideration in accordance with Article 2 hereof and the persons or entities identified in Section 2.3 (e) shall have received bona fide certificates evidencing the Purchase Price Shares, in the amounts identified therein, executed by the person or persons required to so execute such certificates in accordance with the formative corporate documents of PGE.

## **8. Indemnification; Manner of Claims**

### **8.1 Indemnification**

#### **(a) Indemnification by Seller, Shareholder and Consultant**

From and after the Closing Date, Seller, the Shareholder and Consultant will indemnify Purchaser against, and hold Purchaser harmless from, any and all liability, damage, deficiency, loss, cost or expense (including reasonable attorneys fees')

(collectively "Losses") that is based upon or that arises out of (i) any misrepresentation or breach of any representation, warranty or agreement made by Seller or the Shareholder or Consultant herein, (ii) any obligation, debt or liability of Seller to the extent that the same is not expressly assumed herein by Purchaser, or (iii) the use and ownership of the Assets on or prior to the Closing Date (other than those liabilities specifically assumed by Purchaser hereunder) in the following maximum percentages of any such Loss. Seller: 100%; Consultant: 80% of any Loss not paid by Seller; and Shareholder: 20% of any Loss not paid by Seller; provided that Purchaser may not receive recoveries in excess of the amount of Loss.

**(b) Indemnification by Purchaser**

From and after the Closing Date, Purchaser will indemnify Seller against, and hold Purchaser harmless from, any and all Losses based upon or that arising out of (i) any misrepresentation or breach of any representation, warranty or agreement made by Purchaser herein, (ii) the use and ownership of the Assets subsequent to the Closing Date, and (iii) any obligation, debt, liability or Contract of Seller assumed by Purchaser pursuant hereto.

**(c) Cap**

The maximum aggregate Losses for which the Seller, the Shareholder and the Consultant are liable to Purchaser under this Agreement is the Purchase Consideration.

**(d) Exclusive Remedy**

The rights under Sections 8.1 and 8.3 shall constitute Purchaser's exclusive rights against Seller, Shareholder and Consultant for the matters set forth in this Agreement.

**8.2 Manner of Claims**

Any notice of a claim by reason of any of the representations and warranties contained in this Agreement shall state specifically the representation or warranty with respect to which the claim is asserted, and the amount of liability asserted against the other party by reason of the claim.

**8.3 Special Indemnification**

Seller, Shareholders and Consultant, jointly and severally, shall specifically indemnify and hold harmless Purchaser from and against all claims, suits damages, liabilities or expense of any description (including but not limited to reasonable attorney's fees and costs) resulting from any of the following: (1) a claim by RFC Capital, Inc. ("RFC") for any and all amounts related to the commitments set forth in the contract

between Seller and RFC and (2) any damages or losses related to the exercise by RFC of any security interest on any of the Assets (the “**Special Indemnification**”), in each case, with respect to accounts receivable arising prior to \_\_\_\_\_ but not with respect to accounts receivable arising thereafter. The parties agree that the both the cash component of the Purchase Consideration and the shares of PGE Common Stock issued to Shareholder and Consultant hereunder, without limitation, shall be available to satisfy any claim for indemnification pursuant to this Section 8.3.

## **9. Miscellaneous**

### **9.1 Consents of Third Parties**

This Agreement shall not constitute an agreement to assign any interest in any instrument, Contract, lease, permit, Authorization or other agreement or arrangement of Seller, or any claim, right or benefit arising thereunder or resulting therefrom, if any assignment without the consent of a third party would constitute a breach or violation thereof or adversely affect the rights of the Purchaser or Seller thereunder. If a consent of a third party which is required in order to assign any instrument, Contract, lease, permit, Authorization or other agreement or arrangement or any claim, right or benefit arising thereunder or resulting therefrom, which consent Seller shall use its best efforts to obtain prior to the Closing, is not obtained prior to the Closing, or if an attempted assignment would be ineffective or would adversely affect the ability of Seller to convey its interest to the Purchaser, Seller will cooperate with Purchaser in any lawful and economically feasible arrangement to provide that Purchaser shall receive Seller’s interest in the benefits under any such instrument, Contract, lease, permit, Authorization or other agreement or arrangement; and any transfer or assignment to Purchaser by Seller of any interest under any such instrument, Contract, lease, permit, Authorization or other agreement or arrangement that requires the consent of a third party shall be made subject to such consent or approval being obtained.

### **9.2 Expenses**

Subject to the terms of **Section 8** hereof, each of the parties hereto shall bear its own expenses, costs and fees (including attorney’s fees) in connection with the transactions contemplated hereby, including the preparation and execution of this Agreement and compliance herewith, whether or not the transactions contemplated hereby shall be consummated.

### **9.3 Severability**

If any term or provision of this Agreement shall be held or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular case because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the term or provision in question inoperative or unenforceable in any other

case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever, but such term or provision shall be deemed modified or deleted as or to the extent required by applicable law. The invalidity of any one or more phrases, sentences, clauses, sections, or subsections of this Agreement shall not affect the remaining portions of this Agreement.

#### **9.4    Notices**

Any notices or other communications required under this Agreement shall be in writing, shall be deemed to have been given when delivered in person, when delivered to a recognized next business day courier, or, if mailed, when deposited in the United States first class mail, registered or certified, return receipt requested, with proper postage prepaid, addressed as follows or to such other address as notice shall have been given pursuant hereto:

If to Seller:

Advantage Telecommunications Corp.  
Attn: Sonya Bly, President  
125 South Swoope  
Suite 102  
Maitland, FL 32751

With a copy to:

J. Marshall Page, Esq.  
Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P.  
201 St. Charles Avenue, 50<sup>th</sup> Floor  
New Orleans, LA 70170

If to Purchaser:

International Exchange Communications, Inc.  
Attn: Gail E. Granton  
533 Airport Blvd., Suite 505  
Burlingame, CA 94010

With a copy to:

Benjamin W. Bronston, Esq.  
Nowalsky, Bronston & Gothard  
A Professional Limited Liability Company  
3500 N. Causeway Blvd.  
Suite 1442  
Metairie, LA 70002

If to The Lustigman Firm, P.C.

The Lustigman Firm, P.C.  
Empire State Building  
Suite 5024  
650 Fifth Avenue  
New York, NY 10118-6098

**9.5    Amendment**

This Agreement may not be amended except by an instrument in writing, duly executed and delivered on behalf of each of the parties hereto.

**9.6    Waiver**

Any party may waive compliance by another with any of the provisions of this Agreement. No waiver of any provisions shall be construed as a waiver of any other provision. Any waiver must be in writing.

**9.7    Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement, and all of which taken together shall constitute one agreement, notwithstanding that all of the parties are not signatories to the original or to the same counterpart.

**9.8    Assignment**

Any assignment of this Agreement or the rights or obligations hereunder by any party without the prior written consent of the nonassigning parties shall be void. Notwithstanding the foregoing, either party may assign all or any part of its rights and/or obligations to one or more affiliates, subsidiaries, parent companies or shareholders of said party. No such assignment shall relieve the assigning party of any of its obligations or duties under this Agreement.

**9.9    Costs**

In the event any action is instituted to enforce or interpret the terms of this Agreement or arises out of this Agreement, the party prevailing in such action shall be entitled to recover its reasonable attorney's fees and costs as determined by the court.

**9.10   Entire Agreement; Applicable Law, etc.**

This Agreement and the other documents or agreements executed contemporaneously herewith or pursuant hereto (including the Management Agreement) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of California applicable to contracts made and to be performed in California.

#### **9.11 Industry Terms and Phrases**

All terms and phrases unique to the telecommunications industry and used within this Agreement shall be defined in accordance with the everyday meaning assigned to such terms and phrases within the industry.

#### **9.12 Stock Legend**

Each of the certificates of PGE Common Stock issued to the Shareholder, the Consultant or The Lustigman Firm, P.C. pursuant to the transactions hereunder, shall bear the following legend:

THE SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF BY THE HOLDER EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT FILED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, WITH RESPECT THERETO OR IN ACCORDANCE WITH AN OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER THAT AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

#### **9.13 Arbitration**

The parties agree that any controversy or claim arising under this Agreement (other than a controversy or claim arising with respect to the Escrow which shall be governed by the procedures set forth in the Escrow Agreement) shall be resolved through alternative dispute resolution means in the following manner:

(a) Initially, the parties will engage in nonbinding mediation. Mediation shall be held in Los Angeles, California or such site as is mutually agreeable to both parties. The mediator shall be jointly appointed by the parties and shall have expertise in commercial dispute resolution.

(b) In the event that the dispute or claim is not satisfactorily resolved through mediation within forty-five (45) days of notice of such claim or dispute by a party, the parties agree to submit such dispute or claim to binding arbitration. Arbitration shall be held in Los Angeles, California, or such other site that is mutually agreeable to

the parties. Any judgement, decision or award by the arbitrator shall be final and binding on the parties and may be enforced in any court having jurisdiction over a party against whom any such judgement, decision or award is to be enforced. The parties specifically and knowingly waive any rights under State or Federal constitutions or statutes which grant a party the right to trial by jury for any claim that might arise under this Agreement or which purports to give a party the right to appeal an arbitrator's judgement, decision or award. The rules and procedures of the American Arbitration Association shall apply.

(c) The parties shall bear their own costs and expenses, including, but not limited to, attorney's fees, for any mediation or arbitration, unless otherwise directed by the mediator or arbitrator.

## **10. Termination**

### **10.1 Mutual Consent**

This Agreement may be terminated at any time prior to the Closing by mutual consent of Seller and Purchaser, expressed by action of their respective Boards of Directors.

### **10.2 Automatic Termination**

This Agreement shall automatically terminate, and the obligations of the parties hereunder shall be discharged, if the Closing does not occur on or prior to

### **10.3 Remedies on Termination**

In the event any party hereto, without the right to do so under this Agreement, shall fail or refuse to consummate the transactions contemplated by this Agreement, or if any default under, or breach of, any representation, warranty, covenant or condition of this Agreement on the part of any party shall have occurred that results in the failure to consummate the transactions contemplated hereby, then, in addition to any other remedies provided in this agreement or by applicable law, the nondefaulting party shall be entitled to obtain from the defaulting party costs, and expenses, including reasonable attorney's fees, incurred by it in enforcing its rights hereunder, including but not limited to the right to seek specific performance of this Agreement. In the event of a termination of this Agreement under this Article 10 for any reason, all amounts due and payable under subsections (i) –(iv) of Section 2.3 (f) shall continue to be due and payable and Seller shall not be required to repay any such amounts to Purchaser.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

**International Exchange Communications,  
Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Advantage Telecommunications Corp.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Sonya Bly

**Advanced Marketing Management, Ltd.,**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**INTERVENTION**

And now comes The Lustigman Firm, P.C. for purposes of intervening into this Asset Purchase Agreement and agreeing to be bound by the terms of Sections 3.13, 6.8 and the provisions of Article 9 but not any other provisions hereof.

**The Lustigman Firm, P.C.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit "B"**  
**Financial Information**

PACIFIC GATEWAY EXCHANGE, INC.  
CONSOLIDATED CONDENSED BALANCE SHEETS  
(in thousands)

<TABLE>  
<CAPTION>

(Unaudited)  
March 31,  
1999  
-----

ASSETS

Cash and cash equivalents	\$ 25,39
Accounts receivable, net of allowance for doubtful accounts of \$4,763 in 1999 and \$4,312 in 1998	84,90
Prepaid expenses	2,06
Income taxes receivable	
Deferred income tax	2,28
Other current assets	1,48
	-----
Total current assets	116,12
Property and equipment:	
Undersea fiber optic cables	36,51
Long distance communications equipment	62,61
Computers and office equipment	11,02
Leasehold improvements	3,06
Construction in progress	4,91
Cable construction in progress	15,95
	-----
	134,08
Less: accumulated depreciation	20,33
	-----
Total property and equipment, net	113,74
Deposits and other assets	10,51
	-----
Total assets	\$ 240,38
	=====

LIABILITIES AND STOCKHOLDERS' EQUITY

Current Liabilities:	
Accounts payable	\$ 111,40
Accrued liabilities	4,80
Income taxes payable	4,19
Line of credit	12,70
Other liabilities	92
	-----
Total current liabilities	134,03
Other non-current liabilities	1,96
	-----
Total liabilities	135,99
	=====
Stockholders' Equity:	
Common stock	
Additional paid in capital	65,81
Deferred compensation-restricted stock	(4,51)
Foreign currency translation	(92)
Retained earnings	44,41
Common stock held in treasury, at cost	(40)
	-----
Total stockholders' equity	104,38
	-----
Total liabilities and stockholders' equity	\$ 240,38
	=====

Exhibit "C"  
Sample Customer Notice

(Form Letter)

Advantage Telecommunications  
Corp.

International Exchange Communications,  
Inc.

(Customer Name)  
(Address)

Dear Customer:

On \_\_\_\_\_, International Exchange Communications, Inc. ("IECOM") and Advantage Telecommunications Corp. ("Advantage") entered into an agreement whereby, subject to the regulatory approval, the telecommunications assets of Advantage will be acquired by IECOM, and IECOM will become your telecommunication service provider.

This change in ownership will not affect or in any way disrupt your current service. No charges or fees will be imposed and no rate increase will occur as a result of this transaction. The toll free Customer Service number will remain the same and if you have any questions, please call one of our Customer Service Representatives at \_\_\_\_\_.

You understand that you are free to choose another long distance carrier. If you should choose another carrier, you may be assessed a charge by your local telephone service provider.

We at International Exchange Communications are pleased to welcome you to our team and would like to express our appreciation for allowing us the opportunity of being your telecommunication service provider. We are confident that you will be pleased with the high quality of our service.